

Agenda Report

TO: CITY COUNCIL

DATE: April 11, 2005

FROM: CITY MANAGER

SUBJECT: APPEAL OF MODIFICATION TO EXPRESSIVE USE PERMIT #4254
VILLA SORRISO, 168 WEST COLORADO BLVD.

RECOMMENDATION

It is recommended that the City Council acknowledge the Environmental Determination and the Specific Findings in Attachment A to deny the request to modify the conditions of approval for Expressive Use Permit #4254.

Background

Expressive Use Permit #4254, approved October 15, 2003, allowed the creation of a nightclub and restaurant at an existing restaurant space and allowed the expansion of full alcohol sales into a seating areas not previously utilized by the restaurant. The space in question formerly housed Clearwater Restaurant and Old Town Bakery. The operator (Greystone Investments) requested to occupy the existing patio with dining and to provide live entertainment and patron dancing. This change of use required an Expressive Use Permit to allow patron dancing and live entertainment, and a Conditional Use Permit to allow the expansion of full alcohol sales.

Approval of the Expressive and Conditional Use Permits #4254 was granted with minor modifications. Among other conditions, the sale of alcoholic beverages was conditioned to terminate at 1:00 A.M. Also the use of sound amplified equipment was limited to the hours between 6:00 P.M. and 1:00 A.M. of the following day. Patron dancing and live entertainment was conditioned to terminate at 1:00 A.M. every night of operation. Also, a condition pertaining to hour of operations for the overall use was removed by the Zoning Hearing Officer, allowing the restaurant to be open 24 hours a day.

As proposed under this modification application, the applicant is proposing to change the hours of alcohol sales till 2:00 A.M. and proposing to stop sales of alcohol 15 minutes before. Also the applicant seeks to extend the use of sound amplified equipment for patron dancing between the hours of 6:00 P.M. and 2:00 A.M. of the following day. It is important to note, Villa Sorriso does not have a mandated closing time.

ANALYSIS

The applicant's request was to modify two conditions of approval from the original application (attachment A). By permitting the modification, the applicant would have been able to extend the hours of alcohol sales and amplified music for patron dancing to terminate at 2:00 A.M.

On February 2, 2005 the Zoning Hearing Officer conducted a public hearing on the application. Speakers were present both in favor and opposition of the project. The applicant's representative stated the extension of hours would put Villa Sorriso at a competitive advantage to other similar establishments in the region, including Los Angeles, Hollywood, the Inland Empire and Orange County. Based on the public testimony presented that evening, the Zoning Hearing Officer agreed with staff's recommendation and denied the request to modify Expressive Use Permit #4254. The primary reasoning for the denial was due to a new multi-story building containing more than 30 residential units under construction within close proximity and the negative impacts that would result with the extension of hours. A representative from the City's Police Department was present. The Police Department expressed concern about extending the hours of alcohol sales in Old Pasadena. The recommended hours are consistent with other similar businesses in the area (Twin Palms, McMurphy's and the Muse). To allow a modification of Villa Sorriso's Expressive Use Permit, would lead to other modification request which will then impact the surrounding residential uses with all nightclubs emptying out into Old Pasadena at the same time taxing available police resources.

The applicant's appeal of the Zoning Hearing Officer denial to modify the Expressive Use Permit is because they do not agree with the limitation of hours placed on the original application and they are seeking to modify these conditions to allow for an additional hour for both alcohol sales and live entertainment.

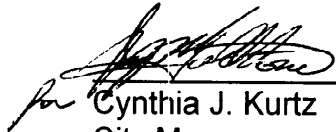
ENVIRONMENTAL DETERMINATION

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 1, Class 1, §15301, Existing Facilities.

Fiscal Impact

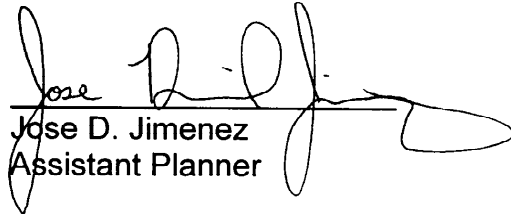
There are no anticipated impacts if the project is denied. Currently, the applicant has 24 hours of operation, with the only limitation placed on alcohol sales and live entertainment.

Respectfully submitted,



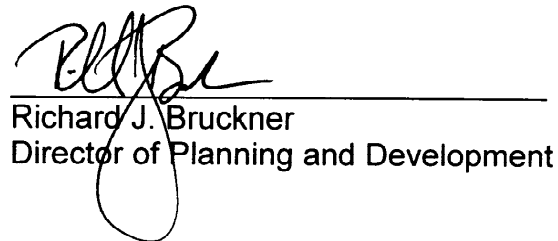
Cynthia J. Kurtz
City Manager

Prepared by:



Jose D. Jimenez
Assistant Planner

Approved by:



Richard J. Bruckner
Director of Planning and Development

Attachment: A. Decision letter for Modification to Expressive Use Permit #4254.

Attachment A



PLANNING & DEVELOPMENT DEPARTMENT
PLANNING DIVISION

October 17, 2003

Burke Farrar
Odyssey Development Services
51 West Dayton Street, Suite 200
Pasadena, CA 91105-2033

**RE: Expressive Use Permit #4254
168 West Colorado Boulevard
Council District #6**

Dear Mr. Farrar:

Your application for a **Expressive Use Permit** at 168 West Colorado Boulevard, was considered by the **Zoning Hearing Officer** on **October 15, 2003**.

EXPRESSIVE USE PERMIT: To allow Greystone Investments to operate a restaurant/nightclub with live entertainment and patron dancing. A Conditional Use permit is also requested to allow full alcohol sales.

After careful consideration of this application, and with full knowledge of the property and vicinity, the Zoning Hearing Officer made the findings as shown on Attachment A to this letter.

Based upon these findings, it was decided by the Zoning Hearing Officer that the Expressive Use Permit be **approved** in accordance with submitted plans stamped **October 15, 2003**. The conditions listed in Attachments B were made a part of the approval.

In accordance with Section 17.80.050 of the Pasadena Municipal Code, the exercise of the right granted under this application must be commenced within two years of the effective date of the approval, unless otherwise specified in the conditions of approval. The Zoning Administrator can grant a one-year extension of your approval. Such a request and the appropriate fee must be received before the expiration date. The right

granted by this approval may be revoked if the entitlement is exercised contrary to the conditions of approval or if it is exercised in violation of the Zoning Code. You are advised that an application for a building permit is not sufficient to vest the rights granted by this approval. The building permit must be issued and construction diligently pursued prior to the expiration of this approval. It should be noted that the time frame within which judicial review of the decision must be sought is governed by California Code of Civil Procedures, Section 1094.6


You are hereby notified that, pursuant to Pasadena Municipal Code Chapter 17.104, any person affected or aggrieved by the decision of the Zoning Hearing Officer has the right to appeal this decision within **ten days (October 27, 2003)**. The effective date of this case will be **October 28, 2003**. Prior to such effective date, a member of the City Council or Planning Commission may stay the decision and request that it be called for review to the Board of Zoning Appeals. However, if the tenth day falls on a day when City offices are closed, the appeal deadline shall be extended through the next day when offices are open. The decision becomes effective on the eleventh day from the date of the decision. The regular Appeal fee is \$1,253.11. The Appeal fee for Non-profit Community-based Organizations pre-registered with Neighborhood Connections is \$626.55.

Any permits necessary may be issued to you by the Building Division on or after the effective date stated above. A building permit application may be submitted before the appeal deadline has expired with the understanding that should an appeal be filed, your application may, at your expense, be required to be revised to comply with the decision on the appeal. **You should call the Current Planning office at 626-744-6777 to find out if any appeal or call for review has been filed before you submit your building permit application.** A copy of this letter must be attached to all plans submitted for building permits.

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, Class 1 §15301, Existing Facilities).

For further information regarding this case please contact **Jason Kruckeberg at (626) 744 - 6726.**

Sincerely,



Dave Mercer
Zoning Hearing Officer

Enclosures: Attachment A, Attachment B

ATTACHMENT A
FINDINGS FOR EXPRESSIVE USE PERMIT #4254

Expressive Use Permit – Live Entertainment and Patron Dancing

1. *The proposed use complies with the applicable development and design requirements of the underlying zoning district in which it is to be located and with the applicable standards of this chapter. Specifically, the proposal meets the intent of the development standards of the Central District and as specified in Section 17.94 (Expressive Use Permits). The restaurant site will comply with Central District standards for parking, height, setbacks, and all other development standards. Additionally, the application has met all of the application and processing criteria for Expressive Use Permits.*

2. *The proposed use will provide and maintain wastewater to establish and maintain an unrestricted flow in sanitary sewers during average and peak conditions as established by the sewer master plan, as amended from time to time. The proposed site is in a developed urban, commercial center where wastewater service is readily available. The use is replacing an existing restaurant and significant changes to wastewater flows are not envisioned as there is no substantial change of use. The impacts on the sanitary sewer system are not expected to be significant.*

3. *The proposed use will provide and maintain solid waste services to establish and maintain a level of service consistent with the city's approved source reduction and recycling element. A condition of approval will be added to this project to ensure that all solid waste complies with the Waste Management Plan requirements of the Central District. The Waste Management Plan will be reviewed by the Zoning Administrator and Public Works Director and will include trash specifications and recycling specifications.*

4. *The proposed use will provide and maintain fire prevention and suppression services as established by the Uniform Fire Code to establish and maintain minimum response time for fire and emergency medical calls as established by the City's approved general plan. The project will be required to meet all Fire Department requirements during the plan check process. In addition, these items will be verified at the time of inspection for occupancy.*

5. *The proposed use will provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the city's approved general plan. The proposed use can be serviced by the police and is not anticipated to increase the levels of service. The parking lots contain lighting that will assist with visibility and provide security for those walking to their cars at night. The police department reviewed the plans and made no comments concerning minimum response times or service issues.*

6. *The requested use, if it would constitute an adult business as provided in Section 17.16.050(A), meets the distance criteria of Section 17.28.030, Additional Land Use Regulations (H). This use is classified as a restaurant/nightclub and not an adult business.*

7. *The requested use, if it would constitute an adult business as provided in Section 17.16.0650(A) does not involve an applicant, if an individual, or any of the officers or general partners of an applicant, if a corporation or partnership, that have been found guilty or pleaded nolo contendere within the past four (4) years of a misdemeanor or a felony classified by the state as a sex or sex related offense. This use is classified as a restaurant/nightclub and not an adult business.*

Conditional Use Permit – Full Alcohol Sales:

8. *The proposed location of the Conditional Use Permit will not adversely affect the general welfare of the surrounding property owners.* The operation of a restaurant use with full alcohol sales is consistent with the surrounding uses. The peak hours of the proposed use will not conflict with the peak hours of the retail and commercial uses in the vicinity. Old Pasadena is viewed as the entertainment and dining hub of the City of Pasadena and a restaurant/nightclub in this location will not adversely impact the welfare of surrounding property owners. The operation may act as an attractor to provide additional patrons to businesses in the area. In addition, sound readings have been taken from various points near the project and amplified music in this area will not add significant noise to the ambient noise situation.

9. *The proposed location of the conditional use will not result in an undesirable concentration of premises for the sale of alcoholic beverages in the area.* The Conditional Use Permit is for the expansion of full alcohol sales into areas that the previous restaurant did not serve. Thus, the number of alcohol related uses will not increase as a result of the approval of this Conditional Use Permit. Furthermore, the AD-1 (Alcohol Density Overlay) is designed to disperse uses such as bars or nightclubs. In this case, there is not another bar, nightclub, or billiard parlor within 250 feet of the site. Thus, the proposed location will not result in an undesirable concentration of such uses.

10. *The proposed location of the conditional use will not detrimentally affect the nearby surrounding area after giving consideration to the proximity and nature of the proposed use with respect to the following: i. Residential uses and residential districts; ii. Religious assembly uses, public or private schools, hospitals, park and recreation facilities, places of public assembly that attract minors and other similar uses; and iii. Other establishments offering alcoholic beverages (including beer and wine) for sale for consumption on-site and off-site.* The subject site is in a developed commercial area, surrounded by similar uses that complement the restaurant. The proposed use is not located adjacent to sensitive receptors. There are parks, a church, and a hospital within the Old Pasadena area, but all each of these uses is several blocks away and will not be impacted by the use. Residential development is proposed to the south of the site at the corner of Green Street and Pasadena Avenue. Sound readings were taken from this site with amplified music and there was not a noticeable change in ambient sound as a result.

11. *The proposed location of the conditional use will not aggravate existing problems created by the sale of alcohol, such as loitering, public drunkenness, sales to minors, noise and littering.* Through the imposition of conditions, the restaurant/nightclub with alcohol sales will not contribute to an aggravation of existing problems in and around the subject site based on the fact that the previous restaurant operated successfully for several years without incident in this location. In addition, the Police Department has affirmed that this use can be served by the Police Department without the need to increase service or resources.

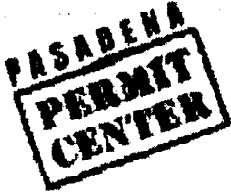
ATTACHMENT B
CONDITIONS FOR EXPRESSIVE USE PERMIT #4254

The applicant or successor in interest shall meet the following conditions:

1. Development shall occur substantially as shown on the submitted site plan and floor plans, stamped "Received October 15, 2003", subject to review by the Zoning Administrator, except as herein modified.
2. The Zoning Administrator, at any time, can call for a review of the approved conditions at a duly noticed public hearing. These conditions may be modified, new conditions added, or a revocation process could be instated.
3. Sale of alcoholic beverages shall terminate at 1:00 AM.
4. Alcoholic beverages shall be served in nondisposable containers.
5. There shall be no off-site sales of alcoholic beverages.
6. The applicant shall coordinate with the Pasadena Health Department on exploring ways to make the second floor in the facility more accessible to the disabled population. Please contact Bill Kimura, Environmental Health Division, at 626-744-6063.
7. Signs advertising brands of alcoholic beverages or the availability of alcohol for sale at the subject site shall not be visible from the exterior of the subject building.
8. Any proposed outdoor dining in the public right-of-way shall require a separate approval and meet all conditions of the Public Works Department.
9. Lease agreements for the 20 surface parking spaces on site and at least 30 surface spaces in the managed lot on the west side of Pasadena Avenue must be provided prior to the issuance of a certificate of occupancy. The existing Zoning Parking Credit Contract (ZPC#157) shall be maintained in the current property owner's name. Any parking credits remaining following the issuance of a certificate of occupancy for the use shall be returned to the city's pool of credits.
10. Noise readings of amplified sound from the site shall not exceed 15 decibels above the ambient noise level at curbside along Colorado Boulevard directly in front of the establishment and at the existing parking lot to the south of the establishment. Noise readings shall be independently verified and shall be reasonably consistent with the readings submitted with this application.
11. Use of sound amplifying equipment shall be limited to the hours between 6:00 p.m. and 1:00 a.m. of the following day. Patron dancing and live entertainment shall also cease at 1:00 a.m. every night of operation.
12. All other requirements of the City of Pasadena Noise Ordinance (Section 9.36 of the Municipal Code) shall be met for this project.

13. The applicant will work with the City of Pasadena Police Department (Special Investigations Section Lieutenant) to establish and implement a dress code best described as "up scale casual".
14. At least one security guard, readily identifiable, shall be on duty from 11:00 p.m. until dawn or ½ hour after closing time.
15. The applicant shall provide a crowd control plan for review by the Planning Department and Police Department. The crowd control plan shall provide a method of retaining all queues to the establishment on the subject site. The plan shall mitigate congregation of patrons along the sidewalk and/or right of way. The crowd control plan shall be approved by the Police Department prior to the issuance of a certificate of occupancy.
16. The following preventive measures shall be undertaken to reduce the potential for alcohol related problems:
 - a. Food service shall remain available during all hours of operation. The subject use shall be maintained as a bona-fide-eating establishment,
 - b. Taxicab phone numbers shall be posted in a conspicuous location at all times in the area(s) where alcohol is served to customers,
 - c. All employees selling or serving alcohol shall be required to participate in an alcohol management training program prior to the operation of selling/serving alcohol,
 - d. The availability of a variety of non-alcoholic beverages shall be made known and offered to customers.
 - e. Video games or similar loitering attractions shall not be permitted
17. Compliance with the City of Pasadena Refuse Storage regulations, see §17.64.240 of the Pasadena Municipal Code, shall be maintained at all times.
18. The applicable code requirements of the Zoning Code and of all other City Departments shall be met at all times.
19. These conditions of approval must be posted in a conspicuous location for public viewing within the restaurant on a continuous basis for the life of this Conditional Use Permit beginning the date the alcohol sales commences.
20. The proposed project, Case No. **PLN2003-00282**, shall comply with all conditions of approval, subject to monitoring by the City Condition Monitoring Coordinator. Condition Monitoring is required for your project. Under the Monitoring Program, your project will be inspected by Code Compliance Staff to determine compliance with the conditions of approval. Required monitoring fees for setup and inspections shall be paid on or after the effective date of this permit, but prior to the issuance of any building permits. Contact the Code Compliance Staff at (626) 744-6433 to verify the fee. All fees are to be paid to the cashier at the permit center located at 175 N. Garfield Avenue. The cashier will ask for the case number provided above.

Failure to pay the required monitoring fee prior to initiating the application may result in revocation proceedings of this entitlement.



APPEAL APPLICATION

GENERAL INFORMATION: (Please print)

Date: February 14, 2005

Appellant: Villa Sorriso, Jack Huang

Mailing Address: 168 West Colorado Boulevard

City: Pasadena State: California Zip: 91105

Phone #: (day) (626) 793-2233 (evening) (626) 793-2233 Fax #: (626) 793-8112

Contact Person: Burke Farrar, Odyssey Development Services Phone #: (626) 683-8159

Applicant (if different than appellant): _____

APPEAL APPLICATION

Application #: Mod. EUP #4254 Date of Decision: February 2, 2005 Appeal Deadline: February 14, 2005

Property Address: 168 West Colorado Boulevard

I hereby appeal the decision of the:

- Zoning Hearing Officer
- Zoning Administrator
- Environmental Administrator
- Planning Director
- Film Liaison

The decision maker failed to comply with the provisions of the zoning ordinance in the following manner:

See Attachment A

If necessary, please attach additional sheets

[Signature]
Applicant's Signature

02/14/2005
Date of Application

Activity #	<u>2005-00080</u>	Appeal Hearing Date	_____
Application Fee:	<u>785-20</u> \$	Received by:	<u>Jose J.</u>
Date Received:	<u>2/14/05</u>		

SIX SETS OF PLANS MUST BE SUBMITTED WITH APPLICATION. VERIFY THAT FILE INCLUDES A SET OF LABELS.

ATTACHMENT A
168 West Colorado Boulevard
Appeal Application Responses

APPLICATION RESPONSES:

The decision-maker failed to comply with the provisions of the zoning ordinance in the following manner:

An application was filed to modify two conditions of approval of Expressive Use Permit #4254. These Conditions are as follows:

3. Sale of alcoholic beverages shall terminate at 1:00 AM.
11. Use of sound amplifying equipment shall be limited to the hours between 6:00 PM and 1:00 AM of the following day. Patron dancing and live entertainment shall also cease at 1:00 AM every night of operation.

The Zoning Hearing Officer denied the request making the following findings:

Expressive Use Permit – Live Entertainment and Patron Dancing

1. The proposed use will not provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the city's approved general plan. Under the current conditions of approval, Villas Sorriso can be serviced by the Police Department, subject to the hours of operation limitation currently in place. The City of Pasadena Police Department specifically requested limited hours of operation for this use to ensure that adequate police service is provided to all businesses in Old Pasadena in general, and throughout the City of Pasadena in particular. Allowing the extended hours of operation would compromise the response time and overall service provided by the Police Department.

Conditional Use Permit – Expansion of hours for alcohol sales.

2. The proposed location of the conditional use will aggravate existing problems created by the sale of alcohol, such as loitering, public drunkenness, sales to minors, noise and littering. Extending the hours of alcohol service will aggravate problems based on the fact that the subject site will be able to dispense alcohol past the time other establishments in the area are required to cease dispensing alcohol. In general, the police department has dedicated staff available to monitor all alcohol outlets in the area up to 1:00 a.m.

The Zoning Hearing Officer's decision is inconsistent with the purposes of the Zoning Code because the decision is based upon what has been adopted on "all businesses in Old Pasadena in general" and not upon specifics of the case of Villa Sorriso. The purposes of the Expressive Use Permit are as follows:

In addition to the general purposes listed in Chapter 17.04, the specific purposes of the expressive use permit are to:

- A. Establish a procedure which places strict limits on processing time and eliminates any possibility for the exercise of unfettered discretion in reviewing applications for establishing expressive uses.

ATTACHMENT A
168 West Colorado Boulevard
Appeal of Zoning Hearing Officer Decision
Modification of Expressive Use Permit #4254
Page 2

- B. Ensure orderly and thorough city review of applications for certain expressive uses including but not limited to adult business uses.
- C. Establish reasonable and uniform regulations that will reduce possible adverse secondary effects that expressive uses may have upon the residents of the city and preserve the integrity of existing commercial areas of the city and of residential areas which are in close proximity to such commercial areas.
- D. To protect the rights conferred by the United States Constitution to expressive uses including but not limited to adult business uses in a manner that ensures the continued and orderly development of property within the city and diminishes those undesirable negative secondary effects that recognized studies have shown to be associated with the development and operation of expressive uses.
- E. To allow a process whereby the unusual site development features or operating characteristics of uses which must comply with this chapter may be conditioned through an individual review, in order to be compatible with the surrounding uses of property. (PMC Section 17.94.010, *emphasis added*)

The purposes of a conditional Use Permit are as follows:

Use permits are required for uses typically having unusual site development features or operating characteristics, so as to require individual review in order to be compatible with their surroundings (PMC Section 17.88.010, *emphasis added*)

The purposes reviewing each case at a public hearing is to review each case individually on the merits of that business and not apply a general standard to all businesses.

While the findings approved by the Zoning Hearing Officer refer to "would compromise the response time and overall service provided by the Police Department." There has been no evidence provided by the Police Department to suggest that response times are a problem in the City of Pasadena. On the contrary, the Police Department response times are exemplary throughout the City. Moreover, the Police Department provides exemplary service in Old Pasadena. During the times in question 1:00 AM to 2:00 AM, the Police Department often monitors patrons leaving the establishment as testified by Lieutenant Keith Jones at the hearing on February 2, 2005. Further, the testimony of Lieutenant Jones acknowledged that the operation of Villa Sorriso has been a problem-free establishment, unlike others in the vicinity that were cited in his testimony.

Following the provisions of the Pasadena Zoning Code and applying the intended purposes to review each case on its own merits, the appellant believes that the decision of the Zoning Hearing Officer is inconsistent with the testimony provided. The appellant respectfully requests that the live entertainment and alcohol sales hours are modified to allow operation until 2:00 AM at Villa Sorriso.